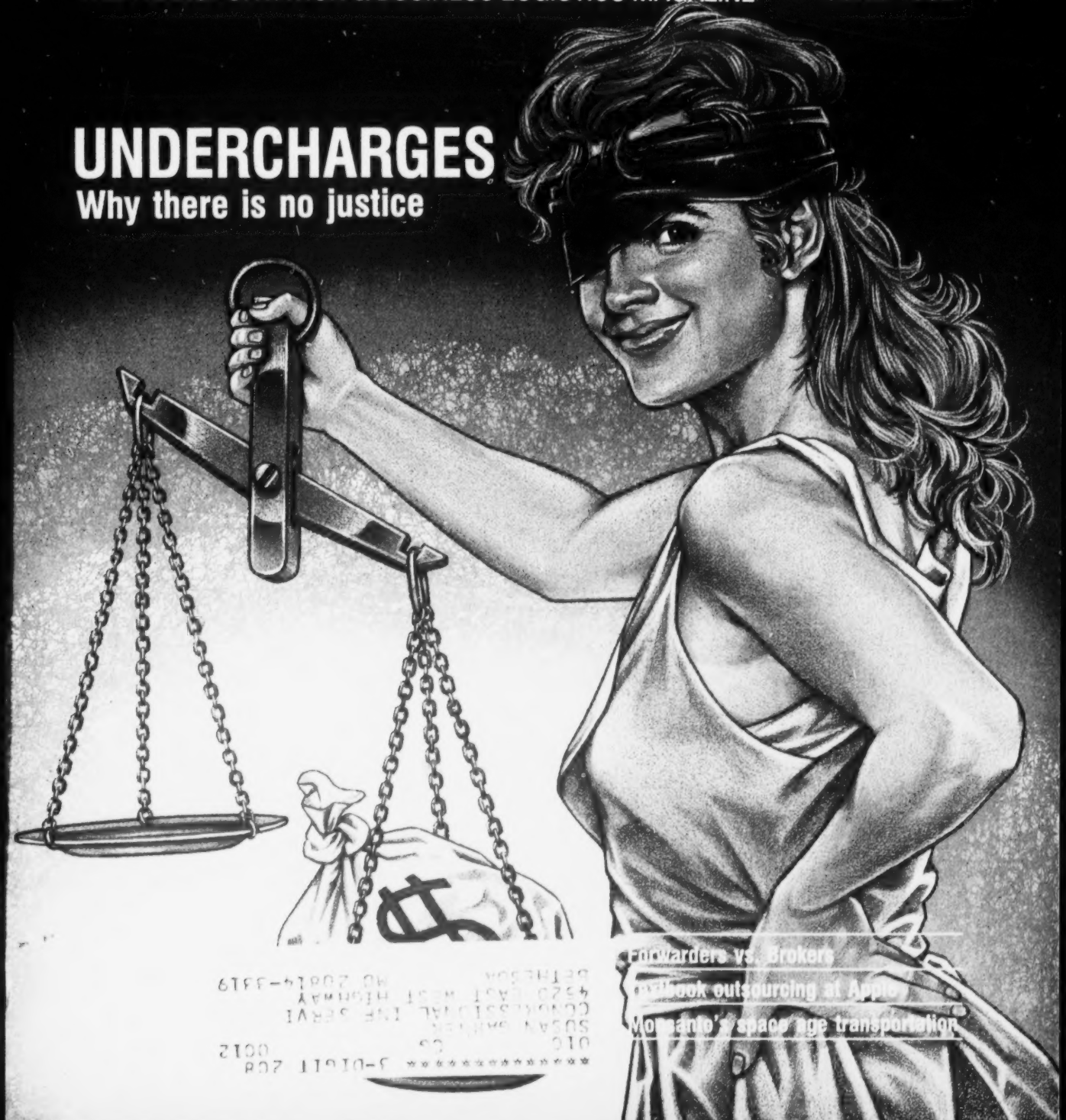
C2150 - 1

CHILTON'S

DISTRIBUTION

THE TRANSPORTATION & BUSINESS LOGISTICS MAGAZINE JUNE 1992

UNDERCHARGES
Why there is no justice



Forwarders vs. Brokers

Outsourcing at Apple

Monsanto's space age transportation

JUNE 1992

CHILTON'S
DISTRIBUTION
THE TRANSPORTATION & BUSINESS LOGISTICS MAGAZINE

VOL. 91, NO. 6

COVER STORY

26 WHERE IS THE JUSTICE?

To many shippers, justice appears to be truly blind when it comes to the multi-billion dollar undercharge problem. Why? The answer is simple: Too many people are making huge amounts of money from this crisis, and shippers are spending far less to get the problem fixed than those who have a vested interest in seeing the gravy train roll on.

FEATURES

38 FORWARDERS VS. BROKERS

Distinctions are so blurred between these two entities that some shippers may not know who they're really dealing with when they tender a shipment. Read on to learn when a forwarder isn't a forwarder, and why a broker may be hard to locate when you file a claim.

44 EXPLORING THE OUTSOURCING FRONTIER

Apple, the innovative computer maker, takes an equally innovative approach to customer service – turning all domestic distribution over to a sole-source logistics provider.

51 TRACKING THE HAZMAT EXPRESS

Monsanto Chemical and Bee Line Trucking have teamed up to move a hazardous material across the U.S. in specially designed vehicles that are tracked every mile of the way by satellite. Drivers use on-board computers to contact home base.

57 CASEBOOK: SMALL PACKAGE SOLUTIONS

DEPARTMENTS

4 EDITORIAL

7 INTERMODAL QUALITY POLL

13 LOGISTICS TRENDS

16 TRANSPORTATION REPORT

24 GLOBAL LOGISTICS REPORT

67 LITERATURE

72 MANAGEMENT

Next Month: ***Logistics Annual Report***

EDITORIAL STAFF

THOMAS A. FOSTER, ESQ. – Editorial Director
(215) 964-4379

JAY GORDON – Executive Editor
(215) 964-4385

E.J. MULLER – Senior Editor (West Coast)
(415) 769-0884

SHARON STRUCKUS – Senior Associate Editor
(215) 964-4387

EMILY HALL – Production Manager
(215) 964-4384

EDITORIAL FAX #: 215-964-4381

CONTRIBUTING EDITORS

JOSEPH V. BARKS (215) 964-4385
ROBERT J. BOWMAN (415) 752-4884
DR. JOSEPH CAVINATO (814) 863-2054
KURT HOFFMAN (301) 762-8250
STANLEY HOFFMAN (203) 790-4195
RICHARD MALKIN (718) 343-7718
JAMES D. MARTIN (708) 256-8182
ROBERT SELWITZ (212) 877-3414
SY ZIVAN (212) 830-5357

FOREIGN CORRESPONDENTS

ANDREW TAUSZ – Canada
HANS VAN DER HOOP – Europe

EDITORIAL ADVISORY BOARD

DR. JOSEPH L. CAVINATO
Associate Professor of Business Logistics
The Pennsylvania State University

DR. RICHARD LANCIONI
Professor of Marketing
Temple University

CHARLES E. MARR
Logistics Engineering Manager
Hewlett Packard

GARY M. THOMPSON
Director of Physical Distribution
Kraft Inc., Dairy Group

DISTRIBUTION, ISSN 0273-6721, owned by Chilton Co., is published monthly 12 times a year, at Chilton Way, Radnor, PA 19089, (215) 964-4000. Chilton Co., part of Capital Cities/ABC, Inc., New York, N.Y. Second Class Postage Paid at Wayne, PA 19087 and additional mailing offices. © CHILTON COMPANY 1991. Subscription rate: U.S. and possessions, $65 per year. Canadian, $70. Foreign $95. Single issue $5.50 except July issue – $45 per copy. Address editorial correspondence to Editor-in Chief, DISTRIBUTION, Chilton Co., Radnor, PA 19089. Postmaster: Send form 3579 to DISTRIBUTION, P.O. Box 2106, Radnor, PA 19089-2106. Canadian GST Registration Number is R125906743. Permission to photocopy for internal use or the internal use of specific clients is granted by Chilton Company for libraries and other users registered with the Copyright Clearance Center (CCC), provided that the base fee of $1.00 per copy of the article, plus 25¢ per page is paid directly to the CCC, 21 Congress Street, Salem, MA 01970. (0273-6721/87 $1.00 + 25¢.)

TRANSPORTATION REPORT

Trucking

ICC UNDERSCORES ITS DEFINITION OF INTERSTATE TRAFFIC

The Interstate Commerce Commission says it knows interstate traffic when it sees it, and it will no longer tolerate interference from state regulatory agencies jealously claiming jurisdiction over every movement within their boundaries. This most recent squabble was triggered by a petition from the Association of Texas Warehousemen and seven individual Texas warehouses who were threatened with prosecution by the Texas Railroad Commission for handling certain shipments to points within Texas as interstate traffic. The ICC ruled that goods transported into Texas and temporarily stored in public warehouses before shipment to other points in Texas are not subject to state economic regulation. The Texas warehouses stand to save between $21 million and $27 million per year by using interstate rates.

Philbin: ICC knows interstate

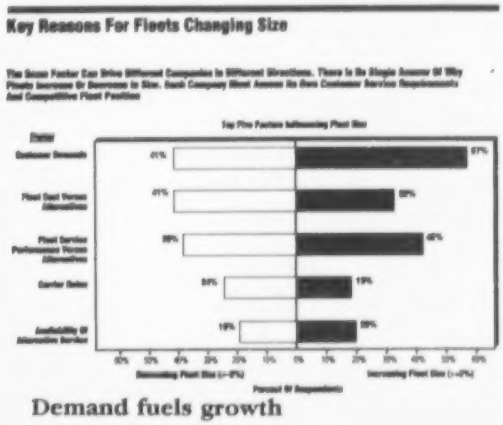
The ICC also issued a policy statement regarding the interstate vs. intrastate question. The statement reiterates the Commission's long-standing definition of interstate traffic moving within a state's boundaries: Whether the shipper has the fixed and persistent intent to have the shipment continue in interstate commerce to its ultimate destination. "If this intent is present, the interstate character of the traffic is not changed simply because the merchandise may move through a warehouse or terminal on the way to its ultimate destination," the ICC states.

The ICC said it would consider the following factors in determining whether or not the intrastate carriage is part of a continuing movement in interstate commerce:

- The shipper, whether or not it knows the ultimate destination of specific shipments, bases its interstate intention on the total volume to be shipped through the warehouse based on projections of customer demand. These can include historic sales in the state, actual recent orders and relevant market surveys of need. Merely planning to solicit future sales within a state doesn't count.
- No processing or product modification occurs at the warehouse, though repacking or reconfiguring may be performed.
- While in the warehouse, the merchandise is subject to the shipper's control.
- The shippper or consignee must ultimately pay for transportation charges even if the warehouse directly pays the carrier.

SERVICE, RATHER THAN COST, DRIVES PRIVATE FLEET DECISIONS

U.S. private fleets continue to grow, despite shippers' increased use of dedicated contract carriers and leasing companies to reduce asset investment. According to an A.T. Kearney study for the National Private Truck Council, the nation's private fleets will grow 15 percent between 1988 and 1994. The primary factor driving this growth is customer demand; 92 percent of the 251 respondents said their fleet's role is primarily to improve service reliability. The other two big reasons for having a fleet: responsiveness to short order cycle times and maintaining direct customer contact.



Demand fuels growth

"Most fleets are recognizing the importance of customer service," says Michael Lipman, the principal at A.T. Kearney who conducted the NPTC study. "They are actively pursuing continuous improvement, and they are making progress in their costs, productivity and performance compared to 1985." For example, the survey reports that the average cost per mile for private tractor trailer fleets in 1991 was $1.43, compared to $1.47 in 1985, adjusted for inflation. However, costs for the alternatives to private fleets, such as contract carriage, have also gone down in recent years. Survey respondents who reported shrinking fleets (a decrease of more than 40 percent) said the lower cost of these alternatives was a key factor.

warehousemen could settle for 5 percent. LTL shippers could opt to pay the difference between their negotiated discount and the average prevailing discount that year, estimated to be 10-20 percent of the claim.

The collection interests have other ideas.

"We want to make a deal with shippers," says Joseph Steinfeld, a leading attorney for the collection interests. "We have proposed legislation that would end all of this litigation, but shipper representatives—specifically Bill Augello—refuse to compromise."

This legislation was drafted jointly by the collection agents, the Teamsters and apparently the Regular Common Carrier Conference. The main claims settlement terms are as follows:

For negotiated rate claims that shippers litigate and lose, they would pay an additional 40 percent of the amount originally billed up to 75 percent of the undercharge claim. Shippers that waive all defenses and settle would get a 25 percent reduction. Shippers would not be able to use the rate reasonableness defense under the main bill. For claims based on *Trancon*-type discounts, shippers would pay 15 percent of the claims. The legislation also includes significant reregulatory measures (See *The Teamster Bill is a Time Bomb,* p. 4.).

"This legislation is not a compromise," argues Augello. "For *Transcon*-type cases alone, claims right now are at least $3 billion. They want shippers to immediately pay them $450 million. No thanks."

Because CURB and the collection interests have been unable to reach a compromise, Chairman Mineta and his subcommittee are drafting legislation, which at least can serve a starting point for Congressional mark up.

Stan Sender, legal counsel and lobbiest for CURB is optimistic that the mark up process can produce a bill acceptable to shippers.

"The political momentum is changing," says Sender. "With 340,000 shippers being sued by Transcon and thousands more by P-I-E, the undercharge problem suddenly has high visibility on Capitol Hill. Even pro-labor congressmen have to listen to shippers now. I think we have a chance at a good undercharge bill."

According to Augello, if a satisfactory bill is not passed this term, no further efforts will be made by CURB for an undercharge relief bill. "We will pursue our legal remedies in the courts and at the ICC where we are winning the great majority of cases. We will also mobilize the shipping community for complete trucking deregulation." ■

continued

A PAC OF TROUBLE FOR SHIPPERS

The Teamsters have always been among the largest, and certainly the shrewdest, users of political action committee (PAC) money to influence legislation. The record shows that they have been especially effective in influencing congressmen involved with undercharge legislation.

DISTRIBUTION researched the filings for 29 PACs affiliated with the Teamsters reporting to the Federal Election Commission for the 100th Congress (1987-88), 101st Congress (1989-90) and 102nd Congress (1991-92). FEC records show that the vast majority of the contributions stem from a PAC called DRIVE, which has contributed $6,261,489 to U.S. Congressmen and Senators between 1987 and March of this year. Contributions from other Teamster-related PACs adds to this figure. (See chart on page 34.)

Among the top 10 recipients of Teamster PAC money have been Glenn Anderson ($27,500), Robert Roe ($27,500) and Norman Mineta ($27,500). Anderson was Chairman of the House Committee on Public Works and Transportation in the 101st and 102nd Congress. Roe now holds this position. Norman Mineta has been on this committee in all three Congresses, and is now Chairman of the Transportation Subcommitttee. James Exon, Chairman of the Senate Surface Transportation Committee and drafter of a pro-Teamster version of an undercharge bill, received $10,000 in the 101st Congress.

The fingerprints of Teamster PAC money also show up on the two unsuccessful attempts to pass undercharge relief legislation in the 101st Congresses. In 1990, shippers pushed to have a bill introduced that would have overturned *Maislin* in that it would have allowed the ICC to find it an unreasonable practice to negotiate a rate lower than its tariff rate. Both Chairmen Anderson and Mineta refused to mark up the bill because of Teamster opposition. A similar Senate bill progressed through the Commerce Committee, but at the last minute, was killed in the Judiciary Committee. At this same time, key members of this committee received large contributions from DRIVE. Chairman Joe Biden (D-DE), Howell Heflin (D-AL) and Arlen Specter (R-PA) each received $10,000. Paul Simon (D-IL) received $20,000, Ted Kennedy (D-MA) received $7,500 and Howard Metzenbaum (D-OH) received $5,200.

CONGRESSMEN ON THE TAKE

Top 80 Recipients of Teamster PAC Money Since 1987

Congressman	Party/State	Total
Alexander, W	D-AR	$20,000
Anderson, G	D-CA	$22,500
Annunzio, F	D-IL	$20,000
Bilbray, J	D-NV	$20,000
Bonier, D	D-MI	$25,000
Boxer, B	D-CA	$25,000
Brown, G	D-CA	$27,500
Campbell, B	D-CO	$22,500
Carr, B	D-MI	$20,000
Clarke, J	D-NC	$20,000
Clement, R	D-IN	$30,000
Collins, C	D-IL	$22,500
Costello, J	D-IL	$27,500
Dingell, J	D-MI	$25,000
Durenberger,D	D-MN (Sen.)	$20,000
Durbin, R	D-IL	$21,000
Dymally, M	D-CA	$25,000
Evans, L	D-IL	$20,000
Feighan, E	D-OH	$22,000
Foglietta, T	D-PA	$20,000
Ford, H	D-TN	$22,000
Ford, W	D-MI	$20,100
Frost, M	D-TX	$19,500
Gephardt, R	D-MO	$35,000
Harris, , C	D-AL	$25,000
Hayes, C	D-IL	$25,000
Hertel, D	D-MI	$26,000
Hoagland, P	D-NE	$25,000
Johnson, T	D-SD	$27,500
Johnson, H	D-FL	$22,500
Jones, B	D-GA	$20,000
Jontz, J	D-IN	$25,000
Kastenmeier, R	D-WI	$20,000
Kildee, D	D-MI	$22,000
Kleczka, G	D-WI	$22,800
Kopetski, M	D-OR	$25,000
Lewis, J	D-GA	$25,000
Lipinski, W	D-TN	$26,000
Lloyd, M	D-TN	$25,000
Long, J	D-IN	$39,750

Congressman	Party/State	Total
Manton, T	D-NY	$22,500
Martinez, M	D-CA	$22,500
Mavroules, N	D-MA	$21,000
McCloskey, F	D-IN	$25,000
McMillen, C	D-MD	$24,950
Miller, G	D-CA	$25,000
Mineta, N	D-CA	$27,500
Murtha, J	D-PA	$25,000
Oberstar, J	D-MN	$22,900
Obey, D	D-WI	$22,500
Owens, M	D-NY	$20,000
Owens, W	D-UT	$25,000
Pallone, F	D-NJ	$25,000
Payne, D	D-NJ	$21,500
Pelosi, N	D-CA	$22,500
Perkins, C	D-KY	$25,000
Peterson, C	D-MN	$29,800
Peterson, D	D-FL	$22,500
Rahall, N	D-WV	$22,500
Roe, R	D-NJ	$27,500
Sangmeiser, G	D-IL	$20,000
Sarpalious, W	D-TX	$25,000
Sharp, P	D-IN	$20,000
Simon, P	D-IL (Sen.)	$20,000
Stallings, R	D-ID	$21,000
Studds, G	D-MA	$25,000
Swift, A	D-WA	$24,500
Tabor, E	D-IA	$20,000
Torricelli, R	D-NJ	$22,500
Traxler, B	D-MI	$22,500
Unsoeld, J	D-WA	$25,000
Visclosky, P	DIN	$27,500
Volkmer, H	D-MO	$21,500
Washington, C	D-TX	$20,000
Wheat, A	D-MO	$20,500
Williams, P	D-MT	$27,500
Wise, R	D-WV	$22,500
Wolpe, H	D-MI	$27,500
Worley, D	D-GA	$20,000
Young, D	R-AK	$23,500